1939-41 **File No.** 3266/3-C I

Public Works **DEPARTMENT**

B CLASS E **BRANCH**

Subject:— Reserved Posts (Indian Civil Police & other services) Rules, 1938

B[K] 1944

File No. 3266/3C I E

Sto. Sectt. Slip 24-A

G R., G D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET (B)

Subject :—

File No. 3266/36 I

P. W. DEPT.

E BRANCH.

References :—

Date.	To whom sent.	Notes and instructions.

Copy of the Government of India, Home Department, letter No. 63/1/39- ests., dated the 16th January 1939.

--Xx--

Subject:- Procedue to be followed in proposing amendments to the Reserved Posts Rules.

.....

I am directed to say that the Position under the Government of India Act, 1935, is that the Secretary of State cannot sanction changes in the Reserved Posts Rules by executive orders in advance of the issue of formal amendments thereto, the procedure for which is a lengthy one (giving of 40 days notice in the London Gazette and the laying of the amendments before Parliament). The Secretry of State has, therefore, emphasised the desirability of sending him ordinary proposals necessitating amendments to those Rules at intervals of six months. I am to add that the Government of India propose to address him in regard to such proposals in January and July each year As regards changes of an urgent nature, however, it would be possible for the Secretary of State to deal with proposals relating to them under the provisions of Section II of the Rules Publication Act, 1893. I am accordingly to request that proposals requiring changes to be made in the Reserved Posts Rules, which are not of an urgent nature, may be sent to the Government of India in the Months of June and December each year.

No. 1567/34-D.
Political and Services Department.
Bombay Castle, 8th February 1939.

Forwarded with compliments for information and guidance to -

The Secretary to the Governor,

The Accountant General, Bombay,
All Departments of the Secretariat (except the Separate Department)

in-----

in continuation of this Department endorsement No. 1567/34-D,
dated the 25th January 1939.

By order of the Governor of Bombay,

Sd/-

For Chief Secretary to the Government of Bombay,
Political and Services Department.

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9718

P.W.D.

Xxx.

Submitted together with the serial no.2408 and 2409 ante:

2. Serial No. 2408: The Reserved Posts (other Services) Rules, 1938, are not applicable to the I.S.E. It does not seem necessary to forward copies thereof to the local officers.

3. Serial No. 2409: The Reservation of Posts (officers in His Majesty's Forces) Rules 1938 will be found on P. 47-48 ante. So far as this Deptt. is concerned, the reservation made therein is personal to Col. D.S.Johnston. A copy of these rules may be forwarded to Col. Johnston as per draft put up for approval.

4. Serial No. 9718: There will be a change in the number of Training Reserve Posts, shown in the First Schedule to the Reserved Posts (other Services) Rules, 1938. The requisite changes will be communicated to the Govt. of India in June next.

5. The portion A within is noted.

Id
/2/39.

Id
20/2

Id
20/2

Id
21/2

3266/36
5718

Subject: The Reservation of Posts (officers in His Majesty's Forces) Rules, 1936.

(Below copy of G. of I. (H.D.) Notification No.6(1/7/38 dated the 22-12-38).

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No.3266/36-E.

P.W.D., B.C., 21st Feby. 1939.

Copy forwarded, with compliments, to col. D.S. Johnston, Chairman, Karachi Port trust, for information.

By order of the G. of B.

Id
16-2-39.

Id
20-2-39.

Id
20-2

Id
21/2

Copy of a letter from the Government of India, Home Department, No. 19/3/41-Eats, dated the 19th November 1942.

Subject:- Appointment of Bombay Civil Service officers in I. C. S. vacancies.

With reference to your letter no. 8642-X/42, dated the 6th May 1942, I am directed to forward for information extracts from the India Office letter No. S.& G.1126/42, dated the 12th August 1942, together with a copy of the India Office letter no. S.& G. 916/42 dated the 27th June 1942, referred to therein.

Extract from India Office letter no. S.& G. 1126/42 dated the 12th August 1942 to the Government of India, Home Department.

~~Appointment of certain Provincial Civil Service officers to officiate in reserved posts for more than twelve months - North West Frontier Province, Central Provinces and Berar, and Sind.~~

Appointment of certain Provincial Civil Service officers to officiate in reserved posts for more than twelve months - North West Frontier Province, Central Provinces and Berar, and Sind.

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4. With regard to your letter of the 9th June, No.19/3/41-Eats., I am directed to refer to the Government of Bombay's letter no. 8462-X/24, dated the 3rd July 1941, copy of which formed the enclosure to Home Department letter no. 19/3/41-Eats dated the 26th July, 1941, and to point out that it was there stated that the Provincial Civil Service officers named had "been appointed to officiate in posts reserved for members of the Indian Civil Service". From the facts now given by the Government of Sind in their letter of the 22nd April 1942 enclosed with your letter ~~EK~~ under reference, it would appear that this statement was incorrect and that the officers concerned were serving in temporary posts which had been substituted for reserved posts. In this connection I am to ~~refer to this EK Off~~

refer to this Office letter of the 27th June , No. S.& G.916/42, and to say that an arrangement under which a reserved post is kept vacant and a temporary post is created in its place should not be resorted to in future without the sanction of the Secretary of State and that in any case in which such an arrangement is in force on the receipt of this letter it should be terminated immediately Indian Civil Service officers become available for appointment to the reserved posts concerned.

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Copy of India Office letter no. S.& G. 916/42, dated the 27th June, 1942 to the Government of India, Home Department.

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Holding in abeyance of the reserved post of Under Secretary to the Government of the Punjab and the creation in its place of a temporary post of Deputy Secretary.

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In reply to Mr. Das's letter of the 12th May, 1942, No. 14/40-Ests., I am directed to say that the Secretary of State Sanctions the continuance of the arrangement whereby a temporary post of Deputy Secretary has been substituted for a reserved post of Under Secretary, in the Punjab, for a further period of two years from the 18th January, 1942. He also sanctions the continued grant of the special pay of Rs. 150/- per mensem to the holder of this post up to the 17th January, 1944.

With regard to the question raised in Mr. Menon's demi-official letter of 26th August, 1940, the original of which has not been received here, I am to say that although it is correct that Provincial Governments have power to create pots and to fix the pay there of and that Rule 10(3) of the Classification Rules is no longer operative, it was never intended that the provisions of Rule 7 of the Reserved Posts (I.C.S.) Rules should be used in conjunction with these powers to alter the construction of the cadre of a

Service.....

service sanctioned by the Secretary of State under Section 244(3) of the Act. Moreover, the holding in abeyance of an inferior reserved post and the substitution for it of an [redacted] reserved superior post removes the post from the scope of Section 246(2). If the making of such a change were permissible it would seem to follow that it would be equally permissible for the authorities in India to hold in abeyance a superior post and create a temporary inferior post in its place. Action along these lines would not only change the construction of the cadre of the service but would render nugatory the provisions of section 246 of the Act of 1935.

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No. 1567/34-B.

Political and Services Department.

Bombay Castle, 27th January 1943.

Forwarded to :-

The Secretary to the Governor,)
) for information.
The Accountant General, Bombay.)

All Departments of the Secretariat (except the Separate Department) for information and guidance.

By order of the Governor of Bombay,

Sd/-

For Secretary to the Government of Bombay,
Political and Services Department.

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Copy of a letter from the Government of India, Home Department, No. 69/1/41-Estt., dated the 22nd July 1942.

Subject:- Amendment of the Reservation of Posts (officers in His Majesty's Forces) Rules, 1939.

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I am directed to forward for the information of the Provincial Government a copy of the Correspondence noted

1. Letter to the India Office No. 63/1/41-Ests., dated the 16th December 1941.
2. Letter from the India Office, No. S.& G.126/42, dated the 21st April 1942 (with enclosure).

} in the margin on the subject noted above. The draft amendment to the Reservation of Post (Officers in His Majesty's Forces) Rules, which forms an enclosure to the letter, from the Secretary of State will be published in the Gazette of India as soon as intimation is received from the India Office that it has been finally enacted, and spare copies will be supplied to the Provincial Government in due course.

Copy of letter No.63/1/41-Ests., dated the 16th December 1941, from the Government of India, Home Department, to India Office, London.

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I am directed to address the Secretary of State on the subject of an amendment in the Reservation of Posts (Officers in His Majest's Forces) Rules, 1936.

2. The Government of Bombay recently requested the Government of India to move the Secretary of State to delete the entry in Schedule B to the above rules relating to Col. D. S. Johnston, C.I.E., R.E., with effect from the date of his superintending Engineer reserved for the officer. As will be seen from para. 2 of Home Department letter No. 105/37-Ests., dated the 19th January 1938, the intention of the Government of India was that this schedule should consist of posts in respect of which there was either a certainty that future recruitment of officers in His Majesty's Forces would not be made or no certainty that such recruitment would be made, and which therefore should be treated as reserved only for the officers then holding the posts. The Government of Bombay were accordingly informed that the post being reserved for Col. Johnston only by name, the reservation would be automatically nullified as soon as Col. Johnston ceased on retirement

Supernnuation Viz. the 7th August 41, in order to enable them to make permanant arrangments for filling the post of

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hold a lien on that post and that the post being reserved... the Provincial Government were competent, without higher sanction, to make permanent arrangements for filling this post as soon as Col. Jonston retired.

3. This action was taken with the concurrence of the Auditor General, who has, however, pointed that the intention underlying schedule B is not unambiguously borne out by rules 2&4, if they are literally interpreted. Rule 2 lays down that the number and character of civil posts (to be referred to as 'reserved posts') which shall be filled by officers of the categories mentioned herin shall be as specified in the Schedules. Rule 4 says that the posts specified in Schedule B shall be filled by the persons named therein. If read literally the rules would thus appear to confer no power on the authorities in India to unreserve any of those posts and permanently to appoint there to an officer other than an officer of the category mentioned in Rule 2, until the Secretary of state amends the Schedule. In the parallel Rule 5 of the Reserved Posts (other Services) Rules which presumably was designed to produce the same effect as Rule 4 of the page 47 Reservation of posts (officers in His Majesty's forces) Rules, the wording is unambiguous and the extent of reservation is quite clear.

4. I am accordingly to request that, if the Secretary of State agrees that the Government of India have correctly interpreted the underlying intention, he may be moved to make the following amendment in the Rules mentioned in para. 1:-

For the first sub-para. of rule 4, substitute 'The posts specified in Schedule B shall be reserved so long as they are held by the persons named against them, being persons who when they were first appointed to a civil post under the Crown in India were officers in His Majesty's Forces.

Copy.....

Copy of letter No. P.& O.126/42, dated the 21st April 1942, from the India office, London, to the Government of India, Home Department.

Proposed amendment of the Reservation of Posts (Officers in H.M. Forces) Rules.

I am directed to refer to Mr. Sahay's letter of the 16th December, 1941, No. 69/1/41-Eets., on the subject of the amendment of the Reservation of Posts (Officers in H.M. Forces) Rules.

2. In reply I am to say that the Secretary of State is advised that as the post specified in both Schedules A and B to the rules in question are posts which are to be filled by Officers of a certain category, the reservation is not automatically nullified as soon as the officer named in Schedule B Permanently vacates the post mentioned in that Schedule.

3. He agrees, however, that it was not the intention that the posts in this schedule should continue to be reserved after the Officers named against them had ceased to hold them, and he is, therefore, amending Rule 4 (copy enclosed) in a manner which will make the position clear.

4. It will, however, be necessary to remove from Schedule B any posts which are no longer reserved, and such deletions as may hereafter be required should be submitted periodically as is done in the case of the other Reserved posts Rules.

Draft Amendment.

I, Leopold Stennett Amery, one of His Majesty's Principal Secretaries of State, in virtue of the powers conferred by Sections 244 and 250 (2) of the Government of India Act 1935 hereby make, with the concurrence of my Advisers, the following amendment in the Reservation of Posts (Officers in His Majesty's Forces) Rules, 1938, namely:

for the first sub-paragraph of Rule 4 of the said Rules, the following shall be substituted :-

"Notwithstanding anything in Rule 2, the posts specified in.....

in Schdule B shall only be reserved reserved so long as long as theyare are held by the persons named against them being persons who when they were first appointed to a Civil post under the Crown in India were officersin His Majest's Forces".

Given under my hand this day of 1942.

One of His Majesty's Principal
Secretaries of State.

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HOME DEPARTMENT.

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NOTIFICATION.

New Delhi, the 21st October 1942.

No. 63/1/41-Estt.- The following amendment to the Reservation of Posts (Officers in His Majest's Forces) Rules, 1936, made by the Secretary of State for India is published for general information:-

"I, Leopold Stennett Amery, one of His Majest's Principal Secretaries of State, in virtue of the powers conferred by section 246 and 290 (2) of the Government of India Act, 1935, hereby make, with the concurrence of my Advisers, the following amendment in the Reservation of Posts (Officers in His Majest's Forces) Rules, 1936, namely:-

For the first sub-paragraph of Rule 4 of the said Rules, the following shall be substituted:-

"Notwithstanding anything in Rule 2, the posts specified in Schdule B shall only be reserved so long as they are held by the persons who named against them, being persons who when they were first appointed to a Civil post under the Crown in India were Officers in His Majest's Forces".

Given under my hand this 25th day of June, 1942.

L. S. AMERY.

One of His Majesty's Principal Secretaries of State.

R. K. CHAINANI,

Deputy Secy. to the Govt. of India.

Below a copy of a letter No.63/1/41-Eats, dated the 22nd July 1942, from the Government of India, Home Department, and its accompaniments, which remained to endorsed through oversight.

No.1587/34-B.

Political and Services Department.

Bombay Castle, 31st March 1943.

Forwarded to all Departments of the Secretariat (except the Separate Department), the Secretary to the Governor and the Accountant General, Bombay, for information and guidance.

2. The Secretary of State has since amended the Reservation of Posts (Officers in His Majesty's Forces) Rules, 1938 - Vide Government of India, Home Department, Notification No. 63/1/41-Eats., dated the 21st October 1942, copy enclosed.

By order of the Governor of Bombay.

Sd/-

For Chief Secretary to the Government of Bombay, Political and Services Department.

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